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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re E.P., a Person Coming Under the
Juvenile Court Law.

H046140
(Santa Clara County
Super. Ct. No. 17JV42686)

THE PEOPLE,

Plaintiff and Respondent,

v.

E.P.,

Defendant and Appellant.

E.P., a minor, appeals from a juvenile court order finding that he violated his probation by obtaining a gang-related tattoo. E.P. contends that we must reverse the juvenile court's determination for insufficient evidence. For the reasons explained below, we affirm the juvenile court.

I. FACTS AND PROCEDURAL BACKGROUND

The Santa Clara County District Attorney filed two juvenile wardship petitions under Welfare and Institutions Code section 602, subdivision (a), in October and November 2017, respectively. The petitions alleged that E.P. violated various provisions

of the Penal Code and Vehicle Code.¹ E.P. admitted the allegations in both petitions. At a February 2018 dispositional hearing, the juvenile court declared E.P. a ward of the court. The juvenile court placed E.P. on probation with various conditions, including “[t]hat [E.P.] not knowingly obtain any new tattoos that he knows to be, or that the Probation Officer informs him to be, gang-related.”

In February and March 2018, respectively, the District Attorney filed two more juvenile wardship petitions. In addition, between February and July 2018, the Santa Clara County Probation Department filed three probation violation notices under Welfare and Institutions Code section 777. E.P. admitted the allegations in the two wardship petitions and the violation of probation alleged in the first probation violation notice but contested the allegations in the second and third notices.

The second notice alleged that E.P. violated probation by twice being away from home during curfew, by knowingly obtaining a new gang-related tattoo, and by not reporting to a scheduled probation meeting. The third notice alleged that E.P. knowingly possessed, displayed, or wore gang-related clothing and left home overnight without permission.

The juvenile court held a contested jurisdictional hearing on the second probation violation notice. E.P.’s probation officer, Rosalva Pando, was the sole witness. Pando testified as an expert in “criminal street gangs in Santa Clara County and the identification of criminal street gangs and symbols.” Pando provided information about two gangs in Santa Clara County, the Norteños and Sureños. Although the Norteños and Sureños “do not get along,” gang members from both groups in San Jose use clothing or tattoos representing the San Jose Sharks hockey team to show that they are from San Jose. Pando explained that Sureños use the numbers 13 and 3 as representations of their gang, and some Sureños acquire a three-dot tattoo as a symbol of their Sureño affiliation.

¹ The details of the allegations in the wardship petitions are omitted because they are not relevant to the claim E.P. raises in this appeal.

Pando began supervising E.P. in February 2018. In April 2018, Pando noticed that E.P. had two tattoos—three dots on his wrist and his mother’s name on his forearm. Pando questioned E.P. about the tattoos because it appeared to Pando that “they were new.” When E.P. denied the tattoos were new, Pando informed E.P. that she would “give [E.P.] the benefit of the doubt” and just take a picture of his tattoos. Pando told E.P. that “because of his gang orders he was not to have any new gang related tattoo[s].” When asked if she had “inform[ed] [E.P.] of what [she] would consider to be a gang related tattoo,” Pando said, “Yes. So I gave him specific examples of 408, San Jose or the San Jose Sharks.”

In May 2018, Pando observed and photographed a new shark fin tattoo on E.P.’s hand. Pando considered E.P.’s tattoo gang-related because the “shark fin” “represents San Jose.” Based on her training and experience, Pando concluded that the shark fin tattoo was a gang tattoo, because of the “fact that it represents San Jose, the City of San Jose.” She had seen multiple variations of “shark stuff” in her gang trainings. Pando associated the design of E.P.’s tattoo to the logo of the San Jose Sharks hockey team.²

Based on the hearing evidence and the prior findings, orders, and reports in the case, the juvenile court found that E.P. violated his probation as alleged in the second notice, including by obtaining the shark fin tattoo. The juvenile court sustained all four allegations in the second notice and dismissed the third notice. The juvenile court ordered an out-of-home placement.

E.P. timely appealed.

II. DISCUSSION

E.P. contends that the evidence was insufficient to find that his shark fin tattoo violated a condition of his probation. Specifically, E.P. argues that the juvenile court’s determination was not supported by substantial evidence because the tattoo represented a

² Pando also testified about E.P.’s two curfew violations and his failure to attend the scheduled probation meeting.

particular geographic area—not a particular gang—and thus was not related to a gang. For the following reasons, we conclude that the evidence sufficiently supports the juvenile court’s finding.

The prosecution must prove a probation violation by a preponderance of the evidence. (*In re Eddie M.* (2003) 31 Cal.4th 480, 501; Welf. & Inst. Code, § 777, subd. (c).) “Our review of [a minor’s] substantial evidence claim is governed by the same standard applicable to adult criminal cases. In reviewing the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Our role on appeal is a limited one. Under the substantial evidence rule, we must presume in support of the judgment the existence of every fact that the trier of fact could reasonably have deduced from the evidence. Thus, if the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant reversal of the judgment.” (*In re V.V.* (2011) 51 Cal.4th 1020, 1026, citations, internal quotation marks, punctuation and italics omitted.)

Here, the probation condition stated that E.P. could “not knowingly obtain any new tattoos that he knows to be, or that the Probation Officer informs him to be, gang-related.” After noticing that E.P. had a three-dot tattoo, Probation Officer Pando reminded E.P. that his probation conditions prohibited him from obtaining gang-related tattoos. Pando told E.P. that “408, San Jose or the San Jose Sharks” tattoos are considered to be gang-related.³ Thereafter, E.P. got a shark fin tattoo.

Based on this evidence, the juvenile court reasonably concluded that E.P. had obtained a gang-related tattoo in violation of his probation. Pando was a qualified gang expert. She explained that Norteño and Sureño gang members from San Jose both used

³ E.P. does not challenge this probation condition as being unconstitutionally overbroad.

tattoos and other paraphernalia associated with the San Jose Sharks to show their connection to San Jose. Pando said the particular design of E.P.'s shark fin tattoo mimicked the logo of the San Jose Sharks. Pando's testimony established a link between the two gangs and Sharks' symbols, in particular that the Sharks' logos demonstrated both gangs' geographical nexus to San Jose.

We do not agree with E.P.'s argument that "in order for a particular tattoo to be 'gang-related,' it must be related to a particular gang." The decision of one gang to adopt a symbol that is also used by a rival gang does not mean the symbol cannot be used by members of either gang. If one gang views a symbol as an identifying symbol, the actions of another gang in adopting the same symbol do not negate the relationship of either gang to the symbol. Instead, the symbol is simply related to both gangs individually.⁴ Pando's expert testimony about the use of the Sharks' symbols by the Norteños and the Sureños established that both gangs—though rivals—have decided to incorporate the same geographically related symbols into their own collection of gang identifiers. This testimony amounts to substantial evidence that E.P.'s shark fin tattoo was gang-related. (See *People v. Ferraez* (2003) 112 Cal.App.4th 925, 930–931 ["It is well settled that expert testimony about gang culture and habits is the type of evidence a jury may rely on to reach a verdict on a gang-related offense or a finding on a gang allegation."].)

In addition, Pando explained that E.P.'s three-dot tattoo demonstrated an association with the Sureños. After spotting and photographing E.P.'s three-dot tattoo,

⁴ E.P.'s citation to *People v. Prunty* 62 Cal.4th 59 does not persuade us to conclude otherwise. In *Prunty*, the court examined the meaning of the phrase "criminal street gang" in the Street Terrorism Enforcement and Prevention Act. (*Id.* at p. 71.) The court noted that "[t]he Act indicates that a group must be united by more than shared colors, names, and other symbols." (*Id.* at p. 74.) Although a common symbol can show affiliation between persons who display the symbol, not all who display the symbol are necessarily united. (*Id.* at p.75 ["[T]he use of common colors and symbols does not demonstrate the existence of a unified group."].)

Pando specifically told E.P. that he was not allowed to get a Sharks' tattoo because it would be considered gang-related. E.P. got his shark fin tattoo, despite Pando's warning. E.P. did not offer any evidence in the juvenile court that his tattoo was solely an expression of his loyalty to the San Jose Sharks or to San Jose itself. E.P.'s conduct in the face of Pando's explicit direction sufficiently demonstrated his acquisition of a tattoo he knew to be gang-related.

The evidence presented at the hearing was sufficient to support the juvenile court's finding that E.P. violated the condition of probation that prohibited the acquisition of new, gang-related tattoos.

III. DISPOSITION

The jurisdictional and dispositional orders are affirmed.

DANNER, J.

WE CONCUR:

GREENWOOD, P.J.

GROVER, J.

The People v. E.P.
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